No. 12281

In the United States Court of Appeals for the Ninth Circuit

MRS. LEE BROOKS, ALSO KNOWN AS MRS. GWENLYN BROOKS, APPELLANT

vs.

TIGHE E. WOODS, HOUSING EXPEDITER, OFFICE OF THE HOUSING EXPEDITER, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

APPELLEE'S BRIEF

ED DUPREE,
General Counsel,
HUGO V. PRUCHA,
Assistant General Counsel,
ISADORE A. HONIG,
Special Litigation Attorney,
Office of the Housing Expediter, Washington 25, D. C.

INDEX

	Page
Jurisdiction	1
Statement of Case	2
Summary of Argument	8
Argument:	
I. There is no merit to the contention that the District Court lacked jurisdiction of the Housing Expediter's suit for equitable relief of restitution and injunction because an action for statutory damages filed by a tenant in the California State Court was pending	10
II. The court below was right in rejecting the contention of the appellant that the court lacked jurisdiction	16
III. There is no merit to the contention that the commencement of a suit at law deprived the Housing Expediter of authority to bring an equitable action for restitution	18
IV. There is no merit to the contention that the judgment of the trial court is unenforceable by reason of the asserted expiration of the 1947 Rent Act and the expiration in fact of the Act of 1942	20
V. There is no merit to the contention that the removal of the tenants before filing of this action eliminated the equitable basis for the relief of restitution	24
VI. There is no merit to the contention that the one-year limitation found in Section 205 (e) of the Act of 1942 and Section 205 of the 1947 Rent Act bars equitable relief sought by the Housing Expediter. Moreover, appellant's attack upon the validity of the Rent Director's order cannot affect the issue as to applicability of the one-year limitation	27
VII. There is no merit to the contention that the complaint failed to state a cause of action, and the judgment was, therefore, unfounded	30
VIII. The contention that the tenant's removal from the landlord's accommodations rendered injunctive relief moot in this case is lacking in merit	34
Conclusion	36
Appendix	37

TABLE OF AUTHORITIES

Cases:

Amato v. *Porter*, 157 F. 2d 719 (C. A. 10th)	32
American Fork & Hoe Co. v. *Stampit Corp.*, 125 F. 2d 472 (C. A. 6th)	33
Balabanoff v. *Kellogg et al*, 118 F 2d 597 (C. A. 9th)	33
Bowles v. *Franceschini*, 145 F. 2d 510 (C. A. 1st)	13

861350—49——1

Cases—Continued

	Page
Bowles v. *Leithold*, 155 F. 2d 124 (C. A. 3d)	36
Bowles v. *Luster*, 153 F. 2d 382 (C. A. 9th)	36
Bowles v. *Montgomery Ward & Co.*, 143 F. 2d 38 (C. A. 7th)	36
Bowles v. *Quon*, 154 F. 2d 72 (C. A. 9th)	35, 36
Bowles v. *Skaggs*, 151 F. 2d 817 (C. A. 6th)	32
Butler v. *Judge of the U. S. District Court, Etc.*, 116 F. 2d 1013 (C. A. 9th)	10
Cobleigh & Woods, 172 F. 2d 167 (C. A. 1st)	10
Crary v. *Porter*, 157 F. 2d 410 (C. A. 8th)	32
Creedon v. *Evangelista*, 77 F. Supp. 538 (E. D. Pa.)	25
Creedon v. *Randolph*, 165 F. 2d 918 (C. A. 5th)	19, 26, 28
Ebeling v. *Woods*, 175 F. 2d 242 (C. A. 8th)	23
Fleming v. *Dashiel*, 161 F. 2d 612 (C. A. 9th)	30
Fleming v. *Goodwin*, 165 F. 2d 334 (C. A. 8th)	16
Fontes v. *Porter*, 156 F. 2d 956 (C. A. 9th)	13
Garland v. *Garland*, 165 F. 2d 131 (C. A. 10th)	33
Griffiths Dairy v. *Squire*, 138 F. 2d 758 (C. A. 9th)	32
Hazen v. *National Rifle Ass'n of America*, 101 F 2d 432 (App. D. C.)	31
Hecht v. *Bowles*, 321 U. S. 321	35
Herman v. *Woods*, 175 F. 2d 781 (E. C. A.)	30
Kasishke v. *Keppler*, 158 F. 2d 809 (C. A. 10th)	31
Keiser v. *Walsh*, 118 F. 2d 13 (App. D. C.)	33
Kessler v. *Fleming*, 163 F. 2d 464 (C. A. 9th)	32
Labor Board v. *Express Pub. Co.*, 312 U. S. 426	36
Mandeville v. *Canterbury*, 318 U. S. 47	11
National Labor Relations Board v. *National Garment Co.*, 166 F. 2d 233 (C. A. 8th)	21
Porter v. *Karavas*, 157 F. 2d 984 (C. A. 10th)	31
Porter v. *Lee*, 328 U. S. 246	34
Porter v. *Warner Holding Co.*, 328 U. S. 395	12, 19, 27
Roupp v. *Woods*, 176 F. 2d 544 (C. A. 10th)	30
United States v. *Carter*, 171 F. 2d 530 (C. A. 5th)	21
United States v. *Foster*, 123 F. 2d 32 (C. A. 9th)	32
United States v. *Pinkston*, 85 F. Supp. 516 (W. D. Ky.)	35
United States v. *Zara Contracting Co.*, 146 F. 2d 606 (C. A. 2d)	33
Warner Holding Co. v. *Creedon*, 166 F. 2d 119 (C. A. 8th)	28
Woodbury v. *Porter*, 158 F. 2d 194 (C. A. 8th)	15
Woods v. *Bobbitt*, 165 F. 2d 673 (C. A. 4th)	30
Woods v. *Hills*, 334 U. S. 210	30
Woods v. *Kaye*, 175 F. 2d 886 (C. A. 9th)	29
Woods v. *McCord*, 175 F. 2d 919 (C. A. 9th)	13, 19, 38
Woods v. *Richman*, 174 F. 2d 614 (C. A. 9th)	19, 22, 26, 28
Woods v. *Robb*, 171 F. 2d 539 (C. A. 5th)	32
Woods v. *Seideman*, d/b/a Lincoln Shore Apts., No. 48–C–1480, (N. D. Ill.) decided January 11, 1949	28
Woods v. *Stone*, 333 U. S. 472	30
Woods v. *Trbusek*, 83 F. Supp. 175 (S. D. N. Y.)	28
Woods v. *Vendetti*, 85 F. Supp. 25 (W. D. Pa.)	24
Woods v. *Witzke*, 174 F. 2d 855, (C. A. 8th)	14, 19, 28

AUTHORITIES CITED BY APPELLANT AND DISTINGUISHED HEREIN

Cases: Page

Gillis v. *Keystone Casualty Co.*, 172 F. 2d 826 (C. A. 6th) ... 10, 17, 18
Gregg v. *Winchester*, 173 F. 2d 512 (C. A. 9th) ... 11, 18
Paxson v. *Smock*, 73 F. Supp. 793 (E. D. Pa.) ... 25
Sampson v. *Thomas*, 76 F. Supp. 691 (E. D. Mich.) ... 29
Talbot v. *Woods*, 164 F. 2d 493 (E. C. A.) ... 24
Woods v. *Gochnour*, 81 F. Supp. 457 (E. D. Wash.) ... 23, 29
Woods v. *Kooker*, 83 F. Supp. 362 (W. D. Ark.) ... 25

PERTINENT STATUTES AND REGULATIONS

Statutes:

Emergency Price Control Act, as amended (50 U. S. C. App. Secs. 901, et seq.):
- Section 1 (b) ... 37
- Section 204 (e) ... 38
- Section 205 (a) ... 39
- Section 205 (e) ... 40

Housing and Rent Act of 1947, as amended by Housing and Rent Act of 1948 (50 U. S. C. App. Sec. 1881, et seq.):
- Section 204 (b) ... 41
- Section 205 ... 43
- Section 206 (a) ... 44
- Section 206 (b) ... 44

Housing and Rent Act of 1947, as amended by Housing and Rent Act of 1949 (50 U. S. C., App. Sec. 1881, et seq.):
- Section 204 (f) ... 45
- Section 205 ... 46
- Section 206 (a) ... 47
- Section 206 (b) ... 47

Housing and Rent Act of 1949 (Pub. L. 31, 81st Cong.):
- Section 203 (g) ... 45

Regulations:

Rent Regulation for Housing (10 F. R. 13528), issued pursuant to the Emergency Price Control Act of 1942:
- Section 2 (a) ... 48
- Section 4 (c) ... 48
- Section 5 (c)(1) ... 49

Controlled Housing Rent Regulation (12 F. R. 4331), issued pursuant to the Housing and Rent Act of 1947:
- Section 2 (a) ... 50

Miscellaneous:

Title 1, U. S. C., Section 109 (General Savings Provision) ... 51

Independent Offices Appropriation Act, 1950 (p. 16, Pub. L. 266, 81st Cong.) ... 51

In the United States Court of Appeals for the Ninth Circuit

No. 12281

MRS. LEE BROOKS, ALSO KNOWN AS MRS. GWENLYN BROOKS, APPELLANT

vs.

TIGHE E. WOODS, HOUSING EXPEDITER, OFFICE OF THE HOUSING EXPEDITER, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

BRIEF OF APPELLEE

JURISDICTION

Defendant-appellant [1] appeals from a final judgment warding restitution of rent overcharges to tenants nd injunctive relief in an action brought by the Housing Expediter [2] pursuant to Sections 205 (a) and c) of the Emergency Price Control Act of 1942, as mended [3] (50 U. S. C. App., Sections 925 (a) and c)) and Section 206 of the Housing and Rent Act

[1] Hereinafter referred to as the "appellant."

[2] Hereinafter referred to as the "appellee."

[3] The Emergency Price Control Act of 1942, as amended, is hereinafter called the "Act of 1942."

of 1947, as amended by Public Law 464, 80th Congress, 2d Session [4] (50 U. S. C., App. Sec. 1896).

Judgment was entered on December 2, 1948 (R. 21). Notice of appeal was filed on April 12, 1949 (R. 45) following the denial on March 14, 1949 (R. 44) of defendant's motion for a new trial filed on December 13, 1948 (R. 24). Jurisdiction of the district court was under Sections 205 (a) and (c) of the Price Control Act and Section 206 of the 1947 Rent Act, and jurisdiction of this Court is pursuant to Section 1291 of the Judiciary and Judicial Code (28 U. S. C. A. 1291).

STATEMENT OF THE CASE

The material facts in this case are the following:

The appellant, Mrs. Lee Brooks, was the landlord of housing accommodations located at 1742 West 36th Street, Los Angeles, California (R. 12, 13). The accommodations were situated within the Los Angeles Defense Rental Area, and were subject to the provisions of the Rent Regulation for Housing,[5] issued pursuant to the Act of 1942, and the Controlled Housing Rent Regulation,[6] issued pursuant to the 1947 Rent Act (R. 13). These controlled housing units of the appellant involved in the present action can best be identified by the names of their respective tenants, namely, Mrs. Harold White and Mrs. Mary

---

[4] The Housing and Rent Act of 1947, as amended, is hereinafter called the "1947 Rent Act."

[5] 10 F. R. 13258.

[6] 12 F. R. 4331.

Woodfaulk.[7] Under the Rent Regulations, the applicable maximum rents established for the appellant's housing accommodations were $10.00 per week for the White apartment[8] and $4.50 per week for the Woodfaulk apartment (Finding 7, R. 13–14). During the period from June 5, 1944 to March 17, 1947, the appellant exceeded the maximum rent of $10.00 per week for the White apartment by receiving a rental of $15.50 per week, at a total overcharge of $747.50 (Finding 7, R. 14). The appellant exceeded the maximum rent of $4.50 per week for the Woodfaulk apartment by receiving a weekly rental of $8.50 from December 11, 1946 to May 17, 1947, and $7.50 from May 17, 1947 to September 13, 1947 (Finding 7, R. 14). The total overcharges made by the appellant in the renting of the Woodfaulk apartment amounted to $127.00 (R. 14).

---

[7] The subject housing units are hereinafter referred to as the "White Apartment" and the "Woodfaulk Apartment," respectively.

[8] The appellant in effect challenges the correctness of the trial court's finding that the maximum rent was $10.00 per week by contending in her brief (p. 20, Appellant's Br.), the Rent Director's order establishing the maximum rent was void. This order (which is not reproduced in the printed record) is described in Appellant's Brief (at p. 18), as dated June 30, 1947, and changing the maximum rent from $15.50 per week to $10.00 per week, effective from June 5, 1944. The Rent Director issued an order of this description pursuant to Sections 4 (e) and 5 (c) (1) of the Rent Regulation for Housing (*infra*, p. 48), issued under the Act of 1942, where a landlord filed a late registration for premises initially rented at a rate in excess of the rental generally prevailing for comparable accommodations in the same area. This point will be discussed more fully hereafter at pp. 29–30.

The complaint of the Housing Expediter was filed in the District Court on July 23, 1948 (R. 8), and charged that the defendant received rentals from tenants in excess of the maximum rents established by the Rent Regulations issued under the Act of 1942 and the 1947 Rent Act (See Par. VII of complaint, R. 4–5, and Par. III of complaint, R. 3–4). A Schedule (R. 8), attached to and made a part of Par. VII of the complaint (R. 5), specified the alleged facts with reference to the claimed overcharges, and indicated periods of overcharges during the time when the Act of 1942 was in force and also during the existence of the 1947 Rent Act.[9]

The prayer of the complaint was for restitution of the overcharges to the tenants and injunctive relief against further violations of the maximum rents prescribed by the regulations issued pursuant to the 1947 Rent Act (R. 6, 7). The Answer (R. 9) filed by appellant denied the allegations of the complaint as to the maximum rents, the collection of rents in the amounts and for the periods alleged, and the making of overcharges in the amounts alleged (R. 4). This case came on for trial before the District Court on November 19 and 20, 1948, the Honorable Judge Charles C. Cavanah presiding, without a jury (R. 17). After the introduction of both oral and documentary evidence (R. 12), the Court below made fact findings, *inter alia,* that the Housing Expediter was authorized to bring this action under the Act of 1942 and the 1947 Rent Act; that Mrs. Lee Brooks, as landlord of

[9] The Act of 1942 terminated June 30, 1947; the 1947 Rent Act became effective July 1, 1947.

the White apartment and the Woodfaulk apartment had received overcharges by charging more than the applicable maximum rents which were $10.00 per week and $4.50 per week for the White and Woodfaulk apartments respectively (R. 13–14). The Court ruled (Conclusions of Law 2, R. 15) that the appellant had violated Section 2 (a) of the Rent Regulation for Housing (*infra,* p. 48) and the Act of 1942, and Section 2 (a) of the Controlled Housing Regulations (*infra,* p. 50), and the 1947 Rent Act. Accordingly, the Court held that the plaintiff was entitled to an order requiring the appellant to refund the rental overcharges to the tenants and to a permanent injunction against violations of the 1947 Rent Act and the maximum rents established by the Rent Regulation thereunder (R. 15). Judgment for the amount of the overcharges in favor of the Housing Expediter for the benefit of the tenants and decree for permanent injunction was entered on December 2, 1948 (R. 17–20).

On December 13, 1949, appellant filed a motion for a new trial, asserting error on the part of the trial court in ruling that the validity of the Order [10] of the Rent Director could not be attacked (R. 22). Appellant also urged that the decision in the case was contrary to the evidence, and that the evidence was insufficient to justify the decision (R. 22–23).

---

[10] Apparently the appellant was referring to the order described in Appellant's Brief at pages 18 and 20 which fixed the maximum rent for the White apartment at $10.00 per week, effective from June 5, 1944.

On February 9, 1949, appellant filed a "Motion to Dismiss" the present action, contending that the District Court lacked jurisdiction because the tenant White had filed an action against the appellant based on "the principal cause of this action herein" in the Municipal Court of Los Angeles on July 30, 1947; that jurisdiction was lacking because the tenants had moved prior to filing of the present suit; that the present action was "penal" and the allegations of the complaint for the "penal" action were indefinite as to the statutes allegedly violated because of the use of "and/or", thereby failing to "state facts sufficient to constitute a cause of action herein"; that the plaintiff's suit was barred by the one-year statute of limitations (R. 26–27). The lower court overruled the appellant's motion (R. 44), and notice of appeal from the judgment and from the orders denying the motions for new trial and to dismiss the action, was filed (R. 45).

The Appellant urges a host of contentions for reversing the judgment below (R. 52). These may be summarized as follows:

1. The District Court erred in assuming jurisdiction because the tenant, Mrs. White, had filed an action for overcharges in the Municipal Court of Los Angeles which was pending in the "court of co-ordinate jurisdiction" when the present action was instituted, and is still pending.

2. The District Court erred in refusing to dismiss the action on appellant's motions to dismiss and grant a new trial when the action instituted in the

Municipal Court by the tenant White prior to the present suit was called to the court's attention after judgment herein.

3. "The Housing Expediter had no cause of action because the tenant White had already sued in the State Court."

4. Since the tenant White had sued at law, the Housing Expediter was without authority to sue in equity.

5. The judgment in the present action is unenforceable because "the right of action in which the Judgment herein is based terminated" with the expiration of the 1947 Rent Act "on March 31st, 1949".

6. There was no ground for an equitable action seeking restitution because the tenants vacated appellant's premises before the present action was filed.

7. The right to recover for the benefit of either tenant was barred by a one-year limitation in the law under which the present action was instituted.

8. The complaint fails to state a cause of action because, as a result of the use of "and/or" in allegations, it is not definitely stated upon which of the Federal Acts the action is based.

9. The Court below erred in granting an injunction after the tenants had moved from the appellant's premises.

10. Jurisdiction is lacking under the 1947 Rent Act "for the reason that the 1948 Act is not an interpretation of the prior Act or Acts, but is an entirely new statute".

These contentions will be considered in the order which they appear in Appellant's Brief.

SUMMARY OF ARGUMENT

(1) The present suit in equity by the Housing Expediter for restitution of overcharges and injunction seeks entirely different relief in a separate cause of action from the statutory damage action at law instituted by a tenant under another and independent section of the Act of 1942. Therefore, the principle of comity is not applicable and the District Court properly exercised jurisdiction in this case.

(2) The Court below was right in rejecting the contention of the appellant that the Court lacked jurisdiction. Filing of the statutory damage action in the State Court by a single tenant did not divest the Court below of jurisdiction over this separate action for equitable relief by the Housing Expediter based on overcharges to two tenants.

(3) The commencement of a suit at law by a tenant did not deprive the Expediter of authority to bring an equitable action. Applicable provisions of the Act of 1942 and the 1947 Rent Act support the conclusion that compliance actions by the Housing Expediter are not precluded by the filing of the tenant's action at law.

(4) There is no merit to the contention that the judgment in the present action is unenforceable. The 1947 Rent Act did not terminate on March 31, 1948, but was extended to June 30, 1950 by enactment of Section 203 (g) of the Housing and Rent Act of 1949. The General Savings Provision of the Federal Code preserves causes of action for violations under the 1947 Rent Act, and the savings provision of Section 1 (b) of the Act of 1942 sustains the action

herein insofar as concerns overcharges under the latter Act.

(5) The vacating of appellant's apartments by the tenants does not preclude an award of restitution. This relief serves to promote the legislative policy of preventing inflation and also to obtain compliance with the Acts.

(6) The one-year limitation on statutory damage actions has no application to suits for restitution under either the Act of 1942 or the 1947 Rent Act. Appellant's contention that the Rent Director's order was invalid disregards the established principle that a District Court has no jurisdiction to consider objections to the validity of an order issued under the Act of 1942, and that this is a matter committed by Section 204 (d) of the Act to the exclusive jurisdiction of the Emergency Court of Appeals.

(7) There is no merit to the contention that the complaint failed to state a cause of action. The complaint, construed as a whole, clearly alleged violations of the Act of 1942 and the 1947 Rent Act. Further, the trial court granted the relief to which the plaintiff was entitled, based upon the proof present in the case. In the absence of any showing to the contrary, findings of fact are presumed to be supported by the evidence. In no event are the findings so clearly erroneous that they should be disturbed.

(8) The tenant's removal from appellant's accommodations did not render injunctive relief moot in this case. The issue as to whether future violations should be enjoined was still before the trial court. Also, that Court continued to have jurisdiction under

the 1947 Act to enjoin the appellant because such Act was in effect when the decree was entered. The Court below had jurisdiction to enter the judgment and decree; the judgment was right in all respects and it should be affirmed.

ARGUMENT OF THE CASE

I

There is no merit to the contention that the District Court lacked jurisdiction of the Housing Expediter's suit for equitable relief of restitution and injunction because an action for statutory damages filed by a tenant in the California State court was pending

The appellant contends that the court below "had no jurisdiction" (Brief, p. 8) of the present action because there is pending in the California State Court a prior action brought by one of the tenants concerned to recover for rent overcharges received by the appellant. There is no merit to this contention for two reasons. First, the courts have limited the application of the rule of comity to actions of an *in rem* or *quasi in rem* nature. In such cases, as the Sixth Circuit Court stated in *Gillis* v. *Keystone Mut. Casualty Co.,* 172 F. 2d 826 (at p. 829):

> * * * the court first assuming jurisdiction over the *res* involved may exercise that jurisdiction to the exclusion of the other.

And, in *Butler* v. *Judge of United States District Court, Etc.,* 116 F. 2d 1013, this court observed (at p. 1015):

> The pendency of the same cause of action in a state court between the same parties is ordi-

> narily not a ground for abating the action in the federal court.

See also, *Mandeville* v. *Canterbury,* 318 U. S. 47, where the Supreme Court stated the principle followed by that court is that the rule of comity does not apply "where the judgment sought is strictly *in personam* for the recovery of money or for an injunction compelling or restraining action by the defendant."

Second, for the rule of comity to apply, there must be present in each action identity of the parties, issues, and relief requested. When these prerequisites are present in both the action filed in a federal court and in an action previously started in a state court, the rule of comity requires dismissal of the complaint by the federal court. This is the principle set forth in the cases relied on by appellant. For example, in *Gregg* v. *Winchester,* 173 F. 2d 512, cited by appellant, this court ruled that the Federal District Court should have declined to take jurisdiction in view of the pendency of an action in the State Court, and emphasized (at p. 512):

> The complaint [in the State Court] is practically a duplicate of the one in our case. The issues are the same; the relief asked for is the same; the members of the class similarly situated include the named plaintiffs of the federal action; and the attorneys are the same.

But this principle has no application here since none of the conditions for invoking the rule of comity, as set forth by this court in *Gregg* v. *Winchester, supra,* are present in the case at bar. Neither the parties nor the issues are the same, nor is the action

of the same kind in both courts. The action of a tenant in the State Court is brought pursuant to Section 205 (e) of the Act of 1942 (*infra,* p. 40), whereas the present suit of the Housing Expediter is authorized by Section 205 (a) of the same Act (*infra,* p. 39). The most obvious difference between these two actions is that the plaintiffs therein are not the same party. The action under Section 205 (e) of the Act of 1942 is commenced by the tenant as the plaintiff, but the action under Section 205 (e) is instituted by the Housing Expediter.[11] That the tenant is not a necessary party to the suit by the Housing Expediter under Section 205 (a) of the Act is evident from the holding of the Supreme Court in *Porter* v. *Warner Holding Co.,* 328 U. S. 395, that tenants could be brought in as "interested parties" where necessary to settle their conflicting claims with landlords when a District Court has decided to award restitution in an action by the Administrator [Expediter].

Another plain distinction is that the action of the tenant under Section 205 (e) seeks the relief of statutory damages but the present action under Section 205 (a) requested equitable relief of restitution of the rent overcharges (R. 6). In addition, an injunction against future violations of maximum rents was asked pursuant to Section 206 of the Act of 1947 (*infra,* p. 47) (R. 5, 6). A further point of difference is the absence of an identity of issues. In

[11] The Housing Expediter sues as successor to the Price Administrator who was the official designated in Section 205 (a) of the Act of 1942 (*infra*, p. 39) to bring the suit thereunder.

the instant suit by the Expediter under Section 205 (a) of the Act of 1942, the District Court was called upon in the exercise of its equitable discretion, "to consider whether a restitution order was necessary or proper under the circumstances here present." *Porter* v. *Warner Holding Co.,* 328 U. S. at p. 403. But in the action for statutory damages, under Section 205 (e), the court is obliged to award at least the amount of overcharges to the plaintiff, where the violation is established. *Fontes* v. *Porter,* 156 F. 2d 956, 957 (C. A. 9th); *Bowles* v. *Franceschini,* 145 F. 2d 510, 514 (C. A. 1st). Defenses which may be considered are also different in both suits. In an action under Section 205 (e), the defendant may plead the "partial defense" of "lack of willfullness, coupled with the taking of practicable precautions against the occurrence of a violation" which "operates only to reduce damages to the amount of the overcharge." (*Fontes* v. *Porter, supra* at p. 960.) In sharp contrast, Section 205 (a) of the Act of 1942 (*infra,* p. 39) makes no provision for the introduction of this issue of mitigation of the amount of the defendant's liability. "It is not necessary that a landlord be at fault in order for it to be equitable to require him to restore that which he has illegally received." *Woods* v. *McCord,* 175 F. 2d 919, 922 (C. A. 9th).

In *Porter* v. *Warner Holding Company, supra,* the Supreme Court marked out the lines of essential difference between the cause of action under Section 205 (a) of the Act of 1942 and one under section

205 (e) in the following language (328 U. S. at p. 402):

> When the Administrator seeks restitution under § 205 (a), he does not request the court to award statutory damages to the purchaser or tenant or to pay to such person part of the penalties which go to the United States Treasury in a suit by the Administrator under § 205 (e). Rather he asks the court to act in the public interest by restoring the status quo and ordering the return of that which rightfully belongs to the purchaser or tenant. Such action is within the recognized power and within the highest tradition of a court of equity. Thus it is plainly unaffected by the provisions of § 205 (e).

In *Woods* v. *Witzke,* 174 F. 2d 855, 857 (C. A. 6th), which was an action by the Housing Expediter against a landlord, the Court found the cause of action under 205 (e) of the Act of 1942 to be so different in its nature from the cause of action under Section 205 (a) that the Court directed relief under both these sections be granted by the District Court. In ordering that judgment be entered under Sections 205 (a) and (e) of the Act, the Sixth Circuit Court stated (at p. 857):

> * * * there is no incongruity between the award of statutory damages and restitution. The one is a penalty for violation of the statute and the rent control regulation, and the other is an award for the benefit of the tenant.

Likewise, in *Cobleigh* v. *Woods,* 172 F. 2d 167 (C. A. 1st), the Court, while declining to approve recovery for more than twice the rent overcharges,

nevertheless ruled that the Housing Expediter was authorized under the Act of 1942 to "join in a single complaint requests for appropriate relief under both Section 205 (a) and Section 205 (e)," thus permitting recovery of double the overcharges by way of statutory damages and also the amount of the overcharges in the form of restitution to the tenants (172 F. 2d at p. 170).

The action of the tenant for recovery of statutory damages involves such a different cause of action from that involved in the suit of the Housing Expediter for injunctive relief under Section 205 (a), that relief under one claim will not bar recovery in a suit brought at a subsequent time upon the other claim. This was pointed out by the Court in *Woodbury* v. *Porter,* 158 F. 2d 194 (C. A. 8th). In affirming the ruling of the District Court that the issuance of a final injunction against a landlord under the Act of 1942 did not bar a subsequent action for treble damages under Section 205 (e) of the statute, the Appellate Court noted (158 F. 2d at pp. 194–195):

> The pleadings in the action for damages would be wholly inadequate as a basis for an injunction. To sustain an action for injunction it would be necessary to plead and prove threatened violations of the act and it has been held that if it is clear that violations will not be repeated, an injunction cannot be obtained as the purpose of an injunction is to prevent continued wrongful acts rather than to redress past grievances. *N. L. R. B.* v. *Express Publishing Co.,* 312 U. S. 426, 61 S. Ct. 693, 85 L. Ed. 930.

> No such pleading nor proof would be essential in the action to recover damages.
>
> * * * * *
>
> The injunctional relief is for protection from future violations, while the action for damages is the remedy afforded for violations that have already taken place. We are clear that the judgment enjoining the defendant from further violations of the Act did not constitute a bar to the subsequent action for damages.

See also *Fleming* v. *Goodwin,* 165 F. 2d 334, 336 (C. A. 8th).

Thus, the vital differences shown above between the tenant's action in the state court and the present suit of the Housing Expediter clearly preclude the application of the rule of comity to defeat the jurisdiction of the lower court. The cases cited at pages 8 and 9 of Appellant's Brief do not sustain her contention and have no relevancy to the precise question involved here.

II

The court below was right in rejecting the contention of the appellant that the court lacked jurisdiction

Appellant advanced the argument in her "Motion to Dismiss" the action, filed after the entry of judgment and decree by the lower court, that jurisdiction was lacking over the present action. The reason stated for this contention was that the tenant, Mrs. White, had filed an action relative to the rent overcharges received from her in the Los Angeles Municipal Court on June 30, 1947, which action was pending at the commencement of the present suit (R. 27). But this claim of the appellant ignores the fact that

the action filed herein by the Housing Expediter was also based on overcharges collected by the appellant from another tenant, Mrs. Woodfaulk (R. 14). Therefore, the pendency of an action by a single tenant clearly could not affect the jurisdiction of the court to consider the suit of the Housing Expediter at least insofar as it was based on overcharges collected from another tenant.

The jurisdictional challenge of the appellant is couched in terms of "lack of jurisdiction" (R. 27; Appellant's Brief, p. 10). While the Sixth Circuit Court has not disapproved of such terminology where the rule of comity has been invoked in a proper case,[12] yet the circumstances of appellant's attempted reliance on "comity" in the case at bar plainly do not warrant the assertion of any "lack of jurisdiction." The appellant admittedly (Br. p. 8) did not raise the point of comity as a bar to any branch of the present action in any of her pleadings or at any time during trial. As is shown by the record (at p. 27–28), it was not until after trial and entry of judgment on December 2, 1948 (R. 26) that the pending action was first called to the attention of the District Court on February 9, 1949. Further, the tenant-plaintiff in the State Court had endeavored to abandon her action (R. 29), and so far as appears from the Record herein (R. 29), no further positive proceedings beyond filing the complaint had been taken for more than some fourteen months prior to the judgment herein. Nor does the appellant claim that there is

[12] See *Gillis* v. *Keystone Mut. Casualty Co.*, 172 F. 2d 826, at p. 830.

even a probability that a decision will ever be reached in the State Court action. In the light of the foregoing circumstances, there was no ground for claiming "the forebearance" of the District Court (*Gregg* v. *Winchester, supra,* 173 F. 2d at 514). None of the cases cited by the appellant require such result. Nor is there presented a conflict with the processes of the State Court over a "res" (see, *Gillis* v. *Keystone Casualty Co.,* 172 F. 2d at p. 829).

III

There is no merit to the contention that the commencement of a suit at law deprived the Housing Expediter of authority to bring an equitable action for restitution

In the appellant's statement of points on appeal (Point 4, R. 50), there is advanced the contention that "the tenant, having elected to sue at law, the Housing Expediter was without right or authority to sue in equity, and seek restitution as an incident thereto." This point has not been argued or touched on in appellant's brief. In any event, appellant's proposition clearly finds no support in either the provisions of the Act of 1942 or the 1947 Rent Act. Section 205 (e) of the 1942 Act (*infra,* p. 40), which authorized the tenant's action for statutory damages, does provide that "a judgment in an action for damages *under this subsection* [(e)] shall be a bar to the recovery *under this subsection* of any damages in any other action * * *." [Italics supplied.] Thus the language of Section 205 (e) does not even by implication limit the authority of the Housing Expediter under the separate subsection (a) of Section 205 of

the Act of 1942 (*infra,* p. 39) to invoke the equitable jurisdiction to the courts conferred by the latter subsection of the statute. Nor does Subsection (a) under Section 205 of the Act of 1942 (*infra,* p. 39) contain any such limitation on the Expediter's authority to seek restitution.

Moreover, it is well established that Sections 205 (a) and (e) of the Act of 1942 involve separate causes of action for different relief. *Porter* v. *Warner Holding Co.,* 328 U. S. 395, 402; *Woods* v. *Richman,* 174 F. 2d 614, 616 (C. A. 9th); *Creedon* v. *Randolph,* 165 F. 2d 918, 919 (C. A. 5th); *Woods* v. *Witzke,* 174 F. 2d 855, 857 (C. A. 6th); *Woods* v. *McCord,* 175 F. 2d 919, 921 (See particularly Footnote 5) (C. A. 9th).

This Court, in *Woods* v. *Richman, supra,* noted the differences between actions under Sections 205 (a) and (e) by stating (174 F. 2d at p. 616):

> Section 205 (a) provided a cause of action separate from that set out in § 205 (e), and as respects such cause the one year limitation found in the latter section is not controlling. *Blood* v. *Fleming,* 10 Cir., 161 F. 2d 292. The remedy afforded by § 205 (a) is in addition to others set up in the Act; and an order of restitution may be granted with or without a prohibiting injunction.

Comments to the same effect by other courts are found in the cases cited above. Thus, both the provisions of Sections 205 (a) and (e) of the Act of 1942 and the decisions of the courts thereunder refute the contention of the appellant that the filing of the tenant's action at law precluded the present suit for equitable relief by the Housing Expediter.

IV

There is no merit to the contention that the judgment of the trial court is unenforcable by reason of the asserted expiration of the 1947 Rent Act and the expiration in fact of the Act of 1942

The appellant urges in Points III and IV (pp. 11, 12) of her brief that the court below had no jurisdiction to grant relief in this action because "the 1942, 1947, and 1948 Acts all expired by their terms on or prior to April 1, 1949" and because the Act of 1942 had expired prior to the filing of this action on July 23, 1948. It is pertinent to note, in the first place, that appellant is under a misapprehension in predicating her argument on the expiration of the "1947 and 1948 Acts" * * * "on or prior to April 1, 1949." For the rent provisions of the Housing and Rent Act of 1947 (Pub. L. 129, 80th Cong.), as amended and extended to March 31, 1949, by the Housing and Rent Act of 1948 (Pub. L. 464, 80th Cong.), has been further continued in force to June 30, 1950, by Section 203 (g) of the Housing and Rent Act of 1949 (Pub. L. 31, 81st Cong.).[13] There-

[13] Section 203 (g) of Public Law 31, 81st Congress, provides; "Section 204 (f) of such Act [Housing and Rent Act of 1947], as amended, is amended to read as follows:

"'(f) The provisions of this title shall cease to be in effect at the close of June 30, 1950, or upon the date of a proclamation by the President or upon the date specified in a concurrent resolution by the two Houses of Congress, declaring that the further continuance of the authority granted by this title is not necessary because of the existence of an emergency, whichever date is the earlier; except that as to rights or liabilities incurred prior to such termination date, the provisions of this title and regulations, orders, and requirements thereunder shall be treated as still remaining in force for the purpose of sustaining any proper suit or action with respect to any such right or liability.'"

fore, the 1947 Rent Act did not expire on or prior to April 1, 1949. Further, it must be emphasized that the Act of 1947 does contain a savings clause "as to rights and liabilities incurred prior to" June 30, 1950, which authorizes "any proper suit or action with respect to any such right or liability." This savings clause was made a part of the Act of 1947 by Section 203 (g) of the 1949 Act, approved March 30, 1949.[14]

Prior to the incorporation of the savings clause in the 1947 Rent Act by the enactment of Section 203 (g) of the 1949 rent statute, the general savings provision of the Federal Code, Title I, U. S. Code, Section 109 (*infra,* p. 51) served to preserve causes of action for violations of rent regulations under the 1947 Act. Cf. *United States* v. *Carter,* 171 F. 2d 530 (C. A. 5th), sustaining authority of the Government to maintain restitution suit for violations of maximum sales prices after the expiration of the Veterans' Emergency Housing Act of 1946; *National Labor Relations Board* v. *National Garment Co.,* 166 F. 2d 233, 236 (C. A. 8th), ruling that the general savings provision preserved liabilities rising under the National Labor Relations Act prior to amendment in 1947. As the Fifth Circuit Court stated in *United States* v. *Carter,* 171 F. 2d (at p. 532):

> [2] Under this section [109] penalties and liabilities accruing while an act was in force may be enforced after the repeal unless there is an express provision to the contrary in the repealing statute, *and if a temporary statute expires by its own terms, the same is true un-*

[14] Section 203 (g) is set forth in footnote 13, *supra.*

> *less such temporary statute also contains an express provision to the contrary."* [Italics supplied.]

The appellant concedes (Brief, at p. 11) that the Act of 1942 contained a savings clause in Section 1 (b) thereof (*infra,* p. 37). But, appellant contends that this savings clause does not embrace an equitable action for injunction or restitution. This court has recently ruled against this precise proposition now urged by the appellant, in *Woods* v. *Richman,* 174 F. 2d 614. There the District Court had excluded evidence of rent overcharges received prior to the expiration of the Act of 1942 because the Expediter filed his suit after the Act terminated. On appeal, this Court held that the trial court was in error in declining to try the issue of overcharges with reference to the relief of restitution and stated:

> Section 1 (b) of the 1942 Act, as amended, fixed June 30, 1947, as the termination date thereof "except that as to offenses committed, or rights or liabilities incurred, prior to such termination date, the provisions of this Act and such regulations, orders, price schedules, and requirements shall be treated as still remaining in force for the purpose of sustaining any proper suit, action or prosecution with respect to any such right, liability, or offense." This saving clause preserves accrued rights and liabilities whether or not suit on account thereof is started prior to the termination date. *Fleming* v. *Mohawk Wrecking & Lumber Co.,* 331 U. S. 111, 114, 119, 67 S. Ct. 1129, 91 L. Ed. 1375.
>
> * * * * *

> The 1947 Act prohibits the demand or acceptance of any rent for the use or occupancy of any controlled housing accommodations greater than the maximum rent established under the authority of the Emergency Price Control Act of 1942, as amended, and in effect with respect thereto on June 30, 1947, provision being made by the Expediter for general adjustments. 50 U. S. C. A. Appendix, § 1894. And, as already noted, the provisions of § 205 (a) of the former Act were reenacted without change.
>
> We think, therefore, that it continues to be appropriate for the courts to consider whether an order of restitution should be made as a means of giving effect to the declared policy of Congress.

By its ruling in the *Richman* case, *supra,* this Court has cut the ground from under appellant's reliance on the decision of the District Court in *Woods* v. *Gochnour,* 81 F. Supp. 457 (E. D. Wash.), decided December 28, 1948, appeal pending. In the *Gochnour* case, *supra,* Judge Driver held that a District Court was not authorized to order restitution of rent overcharges received prior to the termination of the Act of 1942 in an action commenced on July 12, 1948, or after the Act had expired. The conclusion thus reached by the lower court in the *Gochnour* case is contrary to the views quoted above from the *Richman* case, *supra,* and must, of course, be regarded as indirectly overruled.

The Eighth Circuit Court in *Ebeling* v. *Woods,* 175 F. 2d 242, followed the ruling of this Court in the *Richman* case. In affirming the grant of an order of restitution by the District Court in a suit filed after

June 30, 1947, for overcharges incurred under the Act of 1942, the appellate court remarked (at p. 244):

> Overcharges that had been made in the pulsative period while the Price Control Act itself was in effect might still in their cumulative effect become part of the base for a psychological spiral of inflation even after the Act had expired. And this fact, among others perhaps, may well have been the reason that Congress chose to allow the syphoning rights created by the Act to survive its termination, as to any previous undissipated overcharges.

See, also, *Woods* v. *Vendetti,* 85 F. Supp. 25, 26 (W. D. Pa.).

Talbot v. *Woods,* 164 F. 2d 493 (E. C. A.) cited at page 12 of Appellant's Brief, is not in point. There the Emergency Court of Appeals merely ruled that it had no jurisdiction under Section 1 (b) of the Act of 1942 (*infra,* p. 37) to entertain a complaint filed after June 30, 1947, challenging rent reduction orders, when there had been no enforcement proceedings predicated on those orders. It is thus plain that the Court below was authorized to enter judgment of restitution for overcharges under Sections 1 (b) and 205 (a) of the Act of 1942 (*infra,* p. 39), and Section 206 (b) of the 1947 Rent Act (*infra,* p. 47).

V

There is no merit to the contention that the removal of the tenants before filing of this action eliminated the equitable basis for the relief of restitution

The appellant urges that the removal of the two tenants before the filing of this action precludes the granting of the equitable relief of restitution. To

sustain this contention, appellant has cited two decisions in neither of which was the legal effect of the removal of tenants upon the right to restitution considered. In *Paxson* v. *Smock,* 73 F. Supp. 793 (E. D. Pa.), cited at page 22 of Appellant's Brief, there was a suit by several tenants of housing accommodations owned by the State of Pennsylvania to enjoin the state and certain officials from evicting them. Two tenants, the Paxsons, vacated their accommodations prior to the decision of the case. Consequently, the Court held that there was no party before the Court with standing to seek injunctive relief with respect to the Paxson premises.

In *Woods* v. *Kooker,* 83 F. Supp. 362 (W. D. Ark.), the Court in the exercise of its discretion did not order restitution of rent overcharges received by the landlord. The Court pointed out circumstances surrounding the overcharges which were persuasive against the entry of the order, such as "the absence of complaints by the tenants while defendant was owner," "the expenses incurred by defendant on the property," "the steps taken by defendant to ascertain the status of his property under the Housing Act." Restitution was not denied because the tenant vacated the premises prior to suit.

A contention similar to that made by appellant was rejected in *Creedon* v. *Evangelista,* 77 F. Supp. 538 (E. D. Pa.). In the *Evangelista* case, *supra,* the Housing Expediter sought "triple damages for rent overcharges over a period of one year and restitution of overcharges prior to that date". The defendant's answer alleged, *inter alia,* that it was "inequitable

after the termination of the tenancy for this suit to be pressed". The Court stated that this and other defenses did not bar summary judgment "as a matter of law" (77 F. Supp. at p. 538).

In *Creedon* v. *Randolph,* 165 F. 2d 918 (C. A. 5th), the District Court found that the landlord had rented the premises to a tenant for three months, and "that long after the statute of limitations had barred the right of tenant or administrator to institute suit for recovery of the overcharge under Sect. 205 (e) of the Act, this suit was brought * * * under Sect. 205 (a), praying refund * * *." Under such state of facts, the Appellate Court reversed the ruling of the District Court that there was no legal basis "to exercise the traditional equity powers and in so doing order restitution of the alleged overcharges" (165 F. 2d at p. 919).

In the *Randolph* case, *supra,* the Court discussed the nature of the remedy afforded by Section 205 (a) of the 1942 Act (*infra,* p. 39) (165 F. 2d 919):

> The remedy invoked under Sec. 205 (a) appertains only to the Administrator as the representative of the Government in the enforcement of this law. That to require restitution of overcharges tends to enforce the law prohibiting them no one would deny. That it operates to confer a benefit on the tenant, who has not seen fit to act in her own behalf, does not detract at all from the enforcement effect nor alter its nature.

In *Woods* v. *Richman,* 174 F. 2d 614, 617, this Court quoted from the opinion of the Supreme Court in *Porter* v. *Warner Holding Co.,* 328 U. S. 395, 400:

> In framing such remedies under Section 205 (a), courts must act primarily to effectuate the policy of the Emergency Price Control Act and to protect the public interest while giving necessary respect to the private interests involved.

And the Supreme Court also stated in the *Warner Holding Co.* case, *supra:*

> And it is not unreasonable for a court to conclude that such a restitution order is appropriate and necessary to enforce compliance with the Act and to give effect to its purposes. Future compliance may be more definitely assured if one is compelled to restore one's illegal gains; and the statutory policy of preventing inflation is plainly advanced if prices or rents which have been collected in the past are reduced to their legal maximums.

In the light of the above comments by the courts, it is clear that the removal of tenants before suit has no bearing on the remedy of restitution which serves the public interest in the stabilization of rents, the prevention of inflation, and the restoration of illegal gains of the landord.

VI

There is no merit to the contention that the one-year limitation found in section 205 (e) of the Act of 1942 and section 205 of the 1947 Rent Act bars equitable relief sought by the Housing Expediter. Moreover, appellant's attack upon the validity of the Rent Director's order cannot affect the issue as to the applicability of the one-year limitation

The appellant asserts that the one-year limitation of Section 205 (e) of the Act of 1942 (*infra,* p. 39) and Section 205 of the 1947 Act (*infra,* p. 43) bars

restitution for nearly all of the overcharges received. Since the present suit was filed July 23, 1948, it is argued that the one-year limitation defeats the claim based on overcharges to one tenant, Mrs. White, which accrued prior to April 22, 1947, and so much of the overcharges to the other tenant, Mrs. Woodfaulk, as accrued prior to July 23, 1947.

But the Circuit Courts of Appeals have uniformly ruled that the one-year limitation of Section 205 (e) of the Act of 1942 applying to statutory damage actions at law is not controlling with respect to the Housing Expediter's suit for injunctive relief under Section 205 (a) of the Act. *Woods* v. *McCord,* 175 F. 2d 919 (C. A. 9th); *Woods* v. *Richman, et al.,* 174 F. 2d 614 (C. A. 9th); *Woods* v. *Witzke,* 174 F. 2d 855 (C. A. 6th); *Creedon* v. *Randolph,* 165 F. 2d 918 (C. A. 5th); *Warner Holding Co.* v. *Creedon,* 166 F. 2d 119 (C. A. 8th). And, consistent with this well established principle under the practically identical Section 205 (a) of the Act of 1942, the courts have held that the Housing Expediter's suit for equitable relief pursuant to Section 206 (b) of the 1947 Rent Act (infra, p. 43) is not restricted by the one-year limitation on statutory damage actions provided in Section 205 of the latter Act. (*Woods* v. *Trbusek,* 83 F. Supp. 175 (S. D. N. Y.); *Woods* v. *Seideman,* d/b/a Lincoln Shore Apts., No. 48–C–1480 (N. D. Ill.), decided January 11, 1949.

In *Woods* v. *Richman, supra,* this Court declared (174 F. 2d at p. 616):

> Section 205 (a) provided a cause of action separate from that set out in Section 205 (e),

> and as respects such cause the one year limitation found in the latter section is not controlling.

Appellant's reliance on *Woods* v. *Gochnour, supra* (cited at p. 16 of her Brief) is misplaced, since the issue of the application of the one-year statutory damage limitation was not dealt with by the court in that case. Nor is *Sampson* v. *Thomas,* 76 F. Supp. 691 (E. D. Mich), cited by appellant (at p. 16 of Brief) in point, since it involved an action by tenants seeking treble damages for rent overcharges.

Contrary to appellant's contention, this question of the statute of limitations is not affected by the claim that the Rent Order establishing the maximum rent for the White Apartment was void.[15] Appellant's assertion that the Rent Order in question is invalid, is a matter not within the jurisdiction of the District Court or this court to consider. Under Section 204 (d) of the Act of 1942 (*infra,* p. 52), the Emergency Court of Appeals was given the exclusive jurisdiction to determine the validity of regulations and orders issued pursuant to the Act of 1942.[16] This Court stated in *Woods* v. *Kaye,* 175 F. 2d 886 (at pp. 888, 889):

> * * * the Emergency Court of Appeals was invested with the sole and exclusive jurisdiction of questions involving the validity of

[15] The Rent Order which appellant challenges is described at page 18 of Appellant's Brief.

[16] The appellant states (p. 18 of Brief) that the Rent Order was dated June 30, 1947, attempting to become effective retroactively from June 5, 1944, * * *."

such orders, subject only to the grant of certiorari by the Supreme Court.

* * * * *

It is our conclusion that the District Court does not have jurisdiction to inquire into that which could have and should have been appealed to the Emergency Court of Appeals.

See also, *Woods* v. *Stone,* 333 U. S. 472, 474; *Fleming* v. *Dashiel,* 161 F. 2d 612, 613 (C. A. 9th); *Woods* v. *Bobbitt,* 165 F. 2d 673, 675 (C. A. 4th); *Roupp* v. *Woods,* 176 F. 2d 544 (C. A. 10th).

The exclusive jurisdiction of the Emergency Court to consider objections to the validity of rent orders issued pursuant to the Act of 1942 and on which enforcement proceedings are based, has survived the termination of the Act. *Woods* v. *Hills,* 334 U. S. 210, 217, Independent Offices Appropriation Act, 1950 (p. 16, Pub. L. 266, 81st Cong., infra). Cf. *Herman* v. *Woods,* 175 F. 2d 781, 784 (E. C. A.), where the Emergency Court exercised jurisdiction to review and set aside a rent reduction and refund order issued June 24, 1947. Since the District Court was not authorized to consider objections to the validity of the rent order concerned, the issue of the one-year limitation is not affected by this line of attack on the restitution order by the Court below.

VII

There is no merit to the contention that the complaint failed to state a cause of action, and the judgment was, therefore, unfounded

The appellant advances as one of the grounds for reversal the circumstance that certain paragraphs of the complaint contain the phrase "and/or". It is

claimed that the use of this expression resulted in the failure of the complaint to state a cause of action because of uncertainty upon which of the Federal Acts (i. e. Act of 1942 or 1947 Rent Act) the action is founded. However, examination of the complaint in its entirety plainly shows that the Housing Expediter was basing his action upon violations under both statutes. By reference, there was incorporated in Paragraph VII of the complaint an attached Schedule (R. 8) which specified the essential facts relative to the violations. This schedule stated periods of overcharges which were included under the effective periods of both Acts.

The complaint "must be considered and construed as a whole, and only in that way can its true intent and impact be ascertained. *Kasishke* v. *Keppler,* 158 F. 2d 809, 811 (C. A. 10th); Cf. *Hazen* v. *National Rifle Ass'n of America,* 101 F. 2d 432, 435 (App. D. C.). And thus construed in the light of the specific facts set forth in the Schedule to the complaint, there was no uncertainty as to the intent to set forth causes of action under both Acts.

Further, the appellant found no such difficulty in construing the complaint when her answer was filed to the complaint in the District Court. Any objection as to the indefinite nature of the pleading was then available to appellant by way of a motion for a more definite statement pursuant to Rule 12 (e), Federal Rules of Civil Procedure;[17] *Porter* v. *Kara-*

[17] Rule 12 (e) reads, in part:

"If a pleading to which a responsible pleading is permitted is so vague or ambiguous that a party cannot reasonably be required

vas, 157 F. 2d 984, 985 (C. A. 10th). But not until some time after trial and judgment was entered did the appellant complain that the complaint was indefinite (R. 28).[18] In any event, the court below made findings that the appellant received rent overcharges "in excess of the maximum rents established by both the Act of 1942 and the 1947 Rent Act and Regulations thereunder (R. 13) for periods when both of these Acts were in force (R. 14).[19] In the absence of any evidence to the contrary, the findings of the trial court "are presumed to be supported by the evidence * * * and cannot be set aside." *Griffiths Dairy* v. *Squire,* 138 F. 2d 758, 760 (C. A. 9th); *United States* v. *Foster,* 123 F. 2d 32, 34 (C. A. 9th). The appellant has supplied no evidence from the trial proceedings to impeach the correctness of the findings (R. 56). Accordingly, the trial court granted the relief to which the Housing Expediter was entitled based upon the proof present in the case. Rule 54

---

to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired."

[18] The equitable action for restitution is not, as appellant asserts, "a penal action." *Bowles* v. *Skaggs*, 151 F. 2d 817, 821 (C. A. 6th). And, even as to the treble damage action under Section 205 (e) of the Act, this Court has ruled that the "treble damage sanction is remedial rather than punitive." *Kessler* v. *Fleming*, 163 F. 2d 464, 468 (C. A. 9th). To the same effect, see *Crary* v. *Porter*, 157 F. 2d 410, 414 (C. A. 8th); *Woods* v. *Robb*, 171 F. 2d 539, 541 (C. A. 5th); *Amato* v. *Porter*, 157 F. 2d 719 (C. A. 10th).

[19] Findings of Fact No. 7 sets forth a period of overcharge from "6–5–44 to 3–17–47" for the White apartment and from "12–11–46 * * * to 9–13–47" for the Woodfaulk accommodation. June 30, 1947, was the terminal date of the Act of 1942, and the 1947 Rent Act became effective July 1, 1947.

(c) Rules of Civil Procedure.[20] *United States* v. *Zara Contracting Co.,* 146 F. 2d 606, 609 (C. A. 2nd); *Garland* v. *Garland,* 165 F. 2d 131, 133 (C. A. 10th); *Keiser* v. *Walsh,* 118 F. 2d 13, 14 (App. D. C.). Thus, any objection to the pleadings ought not to prevail on appeal where the trial court has found facts which constituted violations of the Act of 1942 and the 1947 Rent Act (R. 14, 15), and awarded the relief to which the facts thus found entitled the Expediter under Section 205 (a) of the former Act and Section 206 (b) of the latter Act.

In any event, even if the complaint were deemed to be defective, the District Court was authorized to treat the complaint as amended to conform to the proof. *Balabanoff* v. *Kellogg, et al.,* 118 F. 2d 597, 599 (C. A. 9th), cert. denied, 314 U. S. 635; *American Fork and Hoe Co.* v. *Stampit Corp.,* 125 F. 2d 472, 474 (C. A. 6th). Rule 15 (b), Rules of Civil Procedure.[21] In *Balabanoff* v. *Kellogg, supra,* this court stated in answer to the contention raised after decree

---

[20] Rule 54 (c) states, in part:

"* * * Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings."

[21] Rule 15 (b) reads, in part, as follows:

"*Amendments to Conform to the Evidence.*—When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. * * *"

that the complaint failed to state a cause of action (118 F. 2d 599):

> In the absence of appropriate attack upon it we think the complaint must be held to state facts sufficient to entitle appellees to some relief. * * * We here treat the complaint as amended to conform to the proof.

VIII

The contention that the tenant's removal from the landlord's accommodations rendered injunctive relief moot in this case is lacking in merit

Appellant asserts that the court below erred in granting the injunction against future violations of the 1947 Rent Act because both tenants had moved out of the property before this action was filed. But the Supreme Court ruled, *Porter* v. *Lee,* 328 U. S. 246, that the vacating of the landlord's premises does not render injunctive relief moot, and stated (at p. 251–252):

> Moreover, here the Administrator sought to restrain not merely the eviction of Beever but also that of any other tenant of the landlord as well as other acts in violation of the Regulation. Section 205 (a) authorizes the District Court in its discretion to grant such a broad injunction upon a finding that the landlord has engaged in violations. See *Hecht Co.* v. *Bowles,* 321 U. S. 321. If the eviction proceeding actually was a violation of the Regulation, then Beever's vacating the premises was merely the completion of one violation. The issue as to whether future violations should be enjoined

was still before the Court and was by no means moot.

In *Hecht* v. *Bowles,* 321 U. S. 321, the Supreme Court stated, with reference to the authority of the District Court to issue an injunction after violations were completed (at p. 327):

> We agree that the cessation of violations, whether before or after the institution of a suit by the Administrator, is no bar to the issuance of an injunction under Section 205 (a).

In an action brought by the Housing Expediter pursuant to Section 206 (b) of the 1947 Rent Act, seeking restitution and injunctive relief based on rent overcharges, the Court held (*United States* v. *Pinkston,* 85 F. Supp. 516, W. D. Ky.):

> The fact that the tenant has vacated the premises is of no concern on the injunctive phase of the case (at p. 517).

In *Bowles* v. *Quon,* 154 F. 2d 72, at p. 73, this Court pointed out:

> The injunction imposes no punishment—it merely insures better compliance with the Act. The injunction works no hardship on one who intends to comply with the law.

Clearly, the removal of the tenants did not remove the reason for the injunction to issue, as stated by this Court.

Nor does it appear, in view of the violations of the appellant which extended over many months, that the trial court abused the discretion possessed under Section 205 of the Act of 1947. This court "will not

interfere with or control the action of the court below in such case unless the court has been found guilty of a clear abuse of discretion" (*Bowles* v. *Quon,* supra, at p. 73).

Appellant states in her brief (at p. 21) that the property was unoccupied at the time of filing of this action. But there is no statement that appellant is not now a landlord, nor is there any reason to believe that she will not rent again when she finds a suitable tenant. Thus, there was still reason for the court below to anticipate and restrain other related unlawful acts. *Labor Board* v. *Express Pub. Co.,* 312 U. S. 426, 435; *Bowles* v. *Leithold,* 155 F. 2d 124, 127 (C. A. 3rd); *Bowles* v. *Montgomery Ward & Co.,* 143 F. 2d 38, 43 (C. A. 7th); *Bowles* v. *Luster,* 153 F. 2d 382, 384 (C. A. 9th). Hence, injunctive relief was properly granted pursuant to Section 206 (b) of the 1947 Rent Act (*infra,* p. 44).

CONCLUSION

It is respectfully submitted that the judgment of the Court below is correct in all respects and should be affirmed.

Respectfully submitted.

ED DUPREE,
General Counsel,
HUGO V. PRUCHA,
Assistant General Counsel,
ISADORE A. HONIG,
Special Litigation Attorney,
Office of the Housing Expediter.
Washington 25, D. C.

APPENDIX

The Emergency Price Control Act of 1942, as Amended (50 U. S. C. A., Sec 901 et seq.)

Sec. 1. (b) The provisions of this Act, and all regulations, orders, price schedules, and requirements thereunder, shall terminate on June 30, 1947, or upon the date of a proclamation by the President, or upon the date specified in a concurrent resolution by the two Houses of the Congress, declaring that the further continuance of the authority granted by this Act is not necessary in the interest of the national defense and security, whichever date is the earlier; except that as to offenses committed, or rights or liabilities incurred, prior to such termination date, the provisions of this Act and such regulations, orders, price schedules, and requirements shall be treated as still remaining in force for the purpose of sustaining any proper suit, action, or prosecution with respect to any such right, liability, or offense.

Sec. 4. (a) It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section 202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

SEC. 204. (e) (1) Within thirty days after arraignment, or such additional time as the court may allow for good cause shown, in any criminal proceeding, and within five days after judgment in any civil or criminal proceeding, brought pursuant to section 205 of this Act or section 37 of the Criminal Code, involving alleged violation of any provision of any regulation or order issued under section 2 or of any price schedule effective in accordance with the provisions of section 206, the defendant may apply to the court in which the proceeding is pending for leave to file in the Emergency Court of Appeals a complaint against the Administrator setting forth objections to the validity of any provision which the defendant is alleged to have violated or conspired to violate. The court in which the proceeding is pending shall grant such leave with respect to any objection which it finds is made in good faith and with respect to which it finds there is reasonable and substantial excuse for the defendant's failure to present such objection in a protest filed in accordance with section 203 (a). Upon the filing of a complaint pursuant to and within thirty days from the granting of such leave, the Emergency Court of Appeals shall have jurisdiction to enjoin or set aside in whole or in part the provision of the regulation, order, or price schedule complained of or to dismiss the complaint. The court may authorize the introduction of evidence, either to the Administrator or directly to the court, in accordance with subsection (a) of this section. The provisions of subsections (b), (c), and (d) of this section shall be applicable with respect to any proceeding instituted in accordance with this subsection.

(2) In any proceeding brought pursuant to section 205 of this Act or section 37 of the Criminal Code, in-

volving an alleged violation of any provision of any such regulation, order or price schedule, the court shall stay the proceeding—

(i) during the period within which a complaint may be filed in the Emergency Court of Appeals pursuant to leave granted under paragraph (1) of this subsection with respect to such provision;

(ii) during the pendency of any protest properly filed by the defendant under section 203 prior to the institution of the proceeding under section 205 of this Act or section 37 of the Criminal Code, setting forth objections to the validity of such provision which the court finds to have been made in good faith; and

(iii) during the pendency of any judicial proceeding instituted by the defendant under this section with respect to such protest or instituted by the defendant under paragraph (1) of this subsection with respect to such provision, and until the expiration of the time allowed in this section for the taking of further proceedings with respect thereto.

Notwithstanding the provisions of this paragraph, stays shall be granted thereunder in civil proceedings only after judgment and upon application made within five days after judgment. Notwithstanding the provisions of this paragraph, in the case of a proceeding under section 205 (a) the court granting a stay under this paragraph shall issue a temporary injunction or restraining order enjoining or restraining, during the period of the stay, violations by the defendant of any provisions of the regulation, order, or price schedule involved in the proceeding * * *.

Sec. 205. (a) Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section

4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

SEC. 205. (e) If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may, within one year from the date of the occurrence of the violation, except as hereinafter provided, bring an action against the seller on account of the overcharge. In such action, the seller shall be liable for reasonable attorney's fees and costs as determined by the court, plus whichever of the following sums is the greater: (1) Such amount not more than three times the amount of the overcharge, or the overcharges, upon which the action is based as the court in its discretion may determine, or (2) an amount not less than $25 nor more than $50, as the court in its discretion may determine: *Provided, however,* That such amount shall be the amount of the overcharge or overcharges or $25, whichever is greater, if the defendant proves that the violation of the regulation, order, or price schedule in question was neither willful nor the result of failure to take practicable precautions against the occurrence of the violation.

For the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be; and the word "overcharge" shall mean the amount by which the consideration exceeds the ap-

plicable maximum price. If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, and the buyer either fails to institute an action under this subsection within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the action, the Administrator may institute such action on behalf of the United States within such one-year period. * * *

HOUSING AND RENT ACT OF 1947, AS AMENDED BY PUB. L. 464, 80TH CONG., APPROVED MARCH 30, 1948 (50 U. S. C. A., APP. SEC. 1881 ET SEQ.)

SEC. 204. * * *

(b) [1] (1) Subject to the provisions of paragraphs (2) and (3) of this subsection, during the period beginning on the effective date of this title and ending on the date this title ceases to be in effect, no person shall demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations greater than the maximum rent established under the authority of the Emergency Price Control

[1] This subsection was amended by Section 202 (b), Public Law 464, 80th Congress, to read as provided above. The original subsection read as follows:

"SEC. 204. (b) During the period beginning on the effective date of this title and ending on the date this title ceases to be in effect, no person shall demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations greater than the maximum rent established under the authority of the Emergency Price Control Act of 1942, as amended, and in effect with respect thereto on June 30, 1947: *Provided, however*, That the Housing Expediter shall, by regulation or order, make such adjustments in such maximum rents as may be necessary to correct inequities or further to carry out the purposes and provisions of this title: *And provided further*, That in any case in which a landlord and tenant, on or before December 31, 1947, voluntarily enter into a valid written lease in good faith with

Act of 1942, as amended, and in effect with respect thereto on June 30, 1947: *Provided, however,* That the Housing Expediter shall, by regulation or order, make such individual and general adjustments in such maximum rents in any defense-rental area or any portion thereof, or with respect to any housing accommodations or any class of housing accommodations within any such area or any portion thereof, as may be necessary to remove hardships or to correct other inequities, or further to carry out the purposes and provisions of this title. In the making of adjustments to remove hardships due weight shall be given to the question as to whether or not the landlord is suffering a loss in the operation of the housing accommodations.

(2) In any case in which a landlord and tenant, on or before December 31, 1947, in accordance with the provisions of this subsection as then in effect, voluntarily entered into a valid written lease in good faith with respect to any housing accommodations, such

---

respect to any housing accommodations for which a maximum rent is in effect under this section and such lease takes effect after the effective date of this title and expires on or after December 31, 1948, and if a true and duly executed copy of such lease is filed, within fifteen days after the date of execution of such lease, with the Housing Expediter, the maximum rent for such housing accommodations shall be, as of the date such lease takes effect, that which is mutually agreed between the landlord and tenant in such lease if it does not represent an increase of more than 15 per centum over the maximum rent which would otherwise apply under this section. In any case in which a maximum rent for any housing accommodations is established pursuant to the provisions of the last proviso above, such maximum rent shall not thereafter be subject to modification by any regulation or order issued under the provisions of this title. No housing accommodations for which a maximum rent is established pursuant to the provisions of the last proviso above shall be subject, after December 31, 1947, to any maximum rent established or maintained under the provisions of this title."

housing accommodations shall not be subject to any maximum rent established or maintained under the provisions of this title unless such lease is hereafter terminated or expires before March 31, 1949, in which case the maximum rent for such housing accommodations shall, through March 31, 1949, be not in excess of 15 per centum over the maximum rent which in the absence of a lease would be in effect with respect thereto on the date of enactment of the Housing and Rent Act of 1948: *Provided,* That the landlord and a tenant (including any new tenant) may enter into a new voluntary lease subject to the conditions, specified in paragraph (3) of this subsection, applicable with respect to landlords and tenants who have not heretofore entered into voluntary leases, except that no maximum rent need be in effect on the date of execution of such new lease.

SEC. 205. Any person who demands, accepts, or receives any payment of rent in excess of the maximum rent prescribed under section 204 shall be liable to the person from whom he demands, accepts, or receives such payment, for reasonable attorney's fees and costs as determined by the court, plus liquidated damages in the amount of (1) $50, or (2) three times the amount by which the payment or payments demanded, accepted, or received exceed the maximum rent which could lawfully be demanded, accepted, or received, whichever in either case may be the greater amount: *Provided,* That the amount of such liquidated damages shall be the amount of the overcharge or overcharges if the defendant proves that the violation was neither willful nor the result of failure to take practicable precautions against the occurrence of the violation. Suit to recover such amount may be brought in any Federal, State, or Territorial court of competent jurisdiction within one year after the

date of such violation. For the purpose of determining the amount of liquidated damages to be awarded to the plaintiff in an action brought under this section, all violations alleged in such action which were committed by the defendant with respect to the plaintiff prior to the bringing of action shall be deemed to constitute one violation, and the amount demanded, accepted, or received in connection with such one violation shall be deemed to be the aggregate amount demanded, accepted, or received in connection with all violations. A judgment in an action under this section shall be a bar to a recovery under this section in any other action against the same defendant on account of any violation with respect to the same plaintiff prior to the institution of the action in which such judgment was rendered.

SEC. 206. (a) It shall be unlawful for any person to offer, solicit, demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations in excess of the maximum rent prescribed under section 204 or otherwise to do or omit to do any act in violation of any provision of this title.

(b) Whenever in the judgment of the Housing Expediter any person has engaged or is about to engage in any act or practice which constitutes or will constitute a violation of any provision of this title, he may make application to any Federal, State, or Territorial court of competent jurisdiction, for an order enjoining such act or practice, or for an order enforcing compliance with such provision, and upon a showing by the Housing Expediter that such person has engaged or is about to engage in any such act or practice a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

HOUSING AND RENT ACT OF 1949 (PUBLIC LAW 31, 81ST CONG.)

SEC. 203. * * *

(g) Section 204 (f) of such Act, as amended, is amended to read as follows:

> (f) The provisions of this title shall cease to be in effect at the close of June 30, 1950, or upon the date of a proclamation by the President or upon the date specified in a concurrent resolution by the two Houses of the Congress, declaring that the further continuance of the authority granted by this title is not necessary because of the existence of an emergency, whichever date is the earlier; except that as to rights or liabilities incurred prior to such termination date, the provisions of this title and regulations, orders, and requirements thereunder shall be treated as still remaining in force for the purpose of sustaining any proper suit or action with respect to any such right or liability.

HOUSING AND RENT ACT OF 1947, AS AMENDED BY PUBLIC LAW 31, 81ST CONG.

SEC. 204. * * *

(f) The provisions of this title shall cease to be in effect at the close of June 30, 1950, or upon the date of a proclamation by the President or upon the date specified in a concurrent resolution by the two Houses of the Congress, declaring that the further continuance of the authority granted by this title is not necessary because of the existence of an emergency, whichever date is the earlier; except that as to rights or liabilities incurred prior to such termination date, the provisions of this title and regulations, orders, and requirements thereunder shall be treated as still remaining in force for the purpose of sustaining any proper suit or action with respect to any such right or liability.

861350—49——4

SEC. 205. Any person who demands, accepts, or receives any payment of rent in excess of the maximum rent prescribed under section 204 shall be liable to the person from whom he demands, accepts, or receives such payment (or shall be liable to the United States as hereinafter provided), for reasonable attorney's fees and costs as determined by the court, plus liquidated damages in the amounts of (1) $50, or (2) three times the amount by which the payment or payments demanded, accepted, or received exceed the maximum rent which could lawfully be demanded, accepted, or received, whichever in either case may be the greater amount: *Provided,* That the amount of such liquidated damages shall be the amount of the overcharge or overcharges if the defendant proves that the violation was neither willful nor the result of failure to take practicable precautions against the occurrence of the violation. Suit to recover such amount may be brought in any Federal, State, or Territorial court of competent jurisdiction within one year after the date of such violation: *Provided,* That if the person from whom such payment is demanded, accepted, or received either fails to institute an action under this section within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring action, the United States may institute such action within such one-year period. If such action is instituted, the person from whom such payment is demanded, accepted, or received shall thereafter be barred from bringing an action for the same violation or violations. For the purpose of determining the amount of liquidated damages to be awarded to the plaintiff in an action brought under this section, all violations alleged in such action which were committed by the defendant with respect to the plaintiff prior to the bringing of action shall be deemed to constitute

one violation, and the amount demanded, accepted, or received in connection with such one violation shall be deemed to be the aggregate amount demanded, accepted, or received in connection with all violations. A judgment in an action under this section shall be a bar to a recovery under this section in any other action against the same defendant on account of any violation with respect to the same person prior to the institution of the action in which such judgment was rendered.

PROHIBITION AND ENFORCEMENT

SEC. 206. (a) It shall be unlawful for any person to demand, accept or receive any rent for the use or occupancy of any controlled housing accommodations in excess of the maximum rent prescribed under section 204, or otherwise to do or omit to do any act, in violation of this Act, or of any regulation or order or requirement under this Act, or to offer, solicit, attempt, or agree to do any of the foregoing.

(b) Whenever in the judgment of the Housing Expediter any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act, or any regulation or order issued thereunder, the United States may make application to any Federal, State, or Territorial court of competent jurisdiction for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

RENT REGULATION FOR HOUSING, ISSUED PURSUANT TO THE EMERGENCY PRICE CONTROL ACT OF 1942 (10 F. R. 13528)

SEC. 2. *Prohibition against higher than maximum rents.*—(a) *General prohibition.*—Regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, no person shall demand or receive any rent for or in connection with the use or occupancy on and after the effective date of regulation of any housing accommodations within the Defense-Rental Area higher than the maximum rents provided by this regulation; and no person shall offer, solicit, attempt, or agree to do any of the foregoing. Lower rents than those provided by this regulation may be demanded or received.

SECTION 4. *Maximum rents.*—Maximum rents (unless and until changed by the Administrator as provided in Section 5) shall be:

(e) *First rent after effective date.*—(1) Newly constructed housing accommodations without priority rating first rented on or after the effective date of regulation, or (2) housing accommodations changed on or after such effective date so as to result in an increase or decrease of the number of dwelling units in such housing accommodations, or (3) housing accommodations not rented at any time during the two months ending on the maximum rent date nor between that date and the effective date, the first rent for such accommodations after the change or the effective date, as the case may be, but in no event more than the maximum rent provided for such accommodations by any order of the Administrator issued prior to September 22, 1942. Within 30 days after so renting the landlord shall register the accommodations as provided in section 7. The Administrator may order a decrease in the maximum rent as provided in section 5 (c).

If the landlord fails to file a proper registration statement within the time specified (except where a registration statement was

filed prior to October 1, 1943), the rent received for any rental period commencing on or after the date of the first renting or October 1, 1943, whichever is the later, shall be received subject to refund to the tenant of any amount in excess of the maximum rent which may later be fixed by an order under section 5 (c) (1). Such amount shall be refunded to the tenant within 30 days after the date of issuance of the order. If the Administrator finds that the landlord was not at fault in failing to file a proper registration statement within the time specified, the order under section 5 (c) (1) may relieve the landlord of the duty to refund. Where a proper registration statement was filed before March 1, 1945, the landlord shall have the duty to refund only if the order under section 5 (c) (1) is issued in a proceeding commenced by the Administrator before September 1, 1945. Where a proper registration statement is filed on or after March 1, 1945, the landlord shall have the duty to refund only if the order under section 5 (c) (1) is issued in a proceeding commenced by the Administrator within three months after the date of filing of such registration statement. The foregoing provisions and any refund thereunder do not affect any civil or criminal liability provided by the Act for failure to file the registration statement required by section 7.

SECTION 5. *Adjustments and other determinations.*

(c) *Grounds for decrease of maximum rent.*—The Administrator at any time, on his own initiative or on application of the tenant, may order a decrease of the maximum rent otherwise allowable only on the grounds that:

(1) *Rent higher than rents generally prevailing.*—The maximum rent for housing accommodations under paragraph (c), (d), (e), (g), or (j) of section 4 is higher than the rent generally prevailing in the

Defense-Rental Area for comparable housing accommodations on the maximum rent date.

CONTROLLED HOUSING RENT REGULATION, ISSUED PURSUANT TO THE HOUSING AND RENT ACT OF 1947 (12 F. R. 4331)

SEC. 2. *Prohibition against higher than maximum rents*—(a) *General prohibition.*—Regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, no person shall offer, demand or receive any rent for or in connection with the use or occupancy on and after the effective date of this regulation of any housing accommodations within the Defense-Rental Area higher than the maximum rents provided by this regulation; and no person shall offer, solicit, attempt, or agree to do any of the foregoing. A reduction in the minimum space, services, furniture, furnishings, or equipment required under section 3 of this regulation shall constitute an acceptance of rent higher than the maximum rent. Lower rents than those provided by this regulation may be demanded or received.

MISCELLANEOUS

TITLE I, U. S. CODE, SECTION 109 (61 STAT. 633)

§ 109 Repeal of statutes as affecting existing liabilities.

The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability. The expiration of a temporary statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under

such statute, unless the temporary statute shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action of prosecution for the enforcement of such penalty, forfeiture, or liability. (July 30, 1947, ch 388, § 1, Stat. 633.)

INDEPENDENT OFFICES APPROPRIATION ACT, 1950
(p. 16, Pub. L. 266, 81st Cong.)

OFFICE OF THE HOUSING EXPEDITER

Salaries and expenses, Office of the Housing Expediter: * * *

Provided further, That as to cases involving the functions transferred to the Office of the Housing Expediter by Executive Order 9841, Section 204 (e) of the Emergency Price Control Act of 1942, as amended shall be considered as remaining in full force and effect during fiscal year 1950.

EMERGENCY PRICE CONTROL ACT OF 1942, AS AMENDED
(50 U. S. C. APP. SEC. 901 ET SEQ.)

SEC. 204 (d). Within thirty days after entry of a judgment or order, interlocutory or final, by the Emergency Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, and thereupon the judgment or order shall be subject to review by the Supreme Court in the same manner as a judgment of a circuit court of appeals as provided in section 240 of the Judicial Code, as amended (U. S. C., 1934 edition, title 28, sec. 347). The Supreme Court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this subsection. The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation

or order issued under section 2, of any price schedule effective in accordance with the provisions of section 206, and of any provision of any such regulation, order, or price schedule. Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, order, or price schedule, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders, or making effective any such price schedule, or any provision of any such regulation, order, or price schedule, or to restrain or enjoin the enforcement of any such provision.

U. S. GOVERNMENT PRINTING OFFICE: 1949